THE BOMBAY EVACUEES (ADMINISTRATION OF PROPERTY) ACT, 1949.

CONTENTS.

PREAMBLE

SECTIONS.

1. Short title and extent.
2. Definitions.
3. Appointment of Custodian, etc.
4. Vesting of evacuee property in Custodian.
5. Payment to Custodian of sums payable to evacuees.
6. Custodian to take possession of evacuee property.
7. Inquiry into claims to evacuee property.
8. Prohibitions of certain transations affecting evacuee property.
9. Appeals.
10. Exemption from attachment.
11. Powers of Custodian in regard to management.
12. Maintenance of accounts.
13. Fees.
14. Return of property.
15. Powers of Custodian holding inquiry.
16. Power of Custodian to obtain information.
17. Other powers of Custodian.
18. Penalty for failing to surrender possession of, or to vacante, property.
19. Certain officers to be public servants.
20. Orders not to be called in question.
21. Procedure.
22. Saving.
23. Effect of Acts, etc., inconsistent with other enactments.
24. Bar to legal proceedings.
25. Recovery of arrears.
26. Records under Act to be public documents..
27. Notice to Custodian.
28. Power to make rules.

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BOMBAY ACT No. XXIV OF 1949.[1]

[THE BOMBAY EVACUEES (ADMINISTRATION OF PROPERTY ACT, 1949.]

[*17th May 1949.*]

An Act to provide for the administration of evacuees' property in the Province of Bombay.

WHEREAS it is expedient to provide for the administration of evacuees' property in the Province of Bombay with a view to preserving and protecting such property from misappropriation, deterioration or waste and for certain other purposes hereinafter specified ; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Bombay Evacuees (Administration of Property) Act, 1949.

(*2*) It shall extend to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Custodian" means the Custodian of Evacuee Property and includes a Deputy Custodian of Evacuee Property and an Assistant Custodian of Evacuee Property, appointed under this Act ;

(*b*) "evacuee" means—

(*1*) a person ordinarily resident in, or owning property or carrying on business within, the territories comprised in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country,—

(*i*) leaves or has since the 15th day of August 1947 left the said territories for a place outside India ; or

(*ii*) leaves or has since the 15th day of August 1947 left the said territories for any place outside the Province, but within the Dominion of India, and cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province ; or

(*2*) a person not resident in, but owning property or carrying on business within, the territories comprised in the Province of Bombay, who on account of civil disturbances or the fear of such disturbances, or the partition of the country, cannot personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province.

Explanation.—If any question arises whether a person is an evacuee or not, the question shall be referred to the Provincial Government whose decision shall be final ;

(*c*) "evacuee property" means all property which belongs to, or was occupied by, an evacuee, but does not include any moveable property in his immediate physical possession ;

(*d*) "personal supervision (with its grammatical variations) of property or carrying on business or watching one's interest or enforcing one's right" means supervision or carrying on busines, watching or enforcing, as the case may be, under one's personal presence or by the agents or servants under one's personal presence in the Province.

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1948, Part V, page 544.

Explanation.—If a person is a widow or a minor or is subject to any physical or mental disability, such person shall be deemed to supervise the property or to carry on business or to watch his interest or to enforce his rights personally, if such supervision is made by the agent or guardian of the person duly recognised in this behalf by the Provincial Government or such officer as the Provincial Government may authorise in this behalf;

(*e*) "prescribed" means prescribed by rules made under this Act; and

(*f*) "property" means any moveable or immovable property and includes any right or interest in any shop or business establishment or any factory or workshop or undertaking or in any debt or actionable claim other than a mere right to sue but does not include cash deposits in banks.

Appointment of Custodian, etc.

3. For the purposes of this Act, the Provincial Government may appoint a Custodian of Evacuee Property for the Province of Bombay, and, either by name or designation, one or more Deputy Custodians of Evacuee Property and Assistant Custodians of Evacuee Property for such local area as may be specified, and may, by general or special order, provide for the distribution or allocation of the work to be performed by them under this Act or the rules made thereunder.

Vesting of evacuee property in Custodian.

4. All evacuee property situated within the Province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

Payment to Custodian of sums payable to evacuees.

5. (*1*) Any sum payable to an evacuee in respect of any contract or loan or otherwise howsoever shall be paid to the Custodian by the person liable to pay such sum and shall be held by the Custodian subject to the provisions of this Act.

(*2*) Any payment made otherwise than in accordance with sub-section (*1*) shall not be deemed to discharge the obligation, and shall not affect the right of the Custodian to enforce such obligation.

Custodian to take possession of evacuee property.

6. (*1*) Subject to the provisions of this Act, a Custodian may by general or special order with reference to the location or description of a specific or any class of evacuee property assume possession of, or control over, the property mentioned in the order which shall be published in the *Official Gazette*. From the date of the order, the holder of such property, if any, shall be deemed to be holding it on behalf of the Custodian and shall on demand deliver possession of it to the Custodian or a person authorised by him in this behalf.

(*2*) If the holder of such property refuses or fails to deliver possession of the property, the Custodian may evict such person and use all force necessary thereto, and may, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession of the property.

(*3*) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses.

(*4*) When the Custodian takes possession of moveable property (including the stock-in-trade or plant or machinery of any undertaking), he shall prepare an inventory, in duplicate, of all such moveable property in the presence of not less than two residents of the locality at least one of whom if possible shall be a person

belonging to the community to which the evacuee owner belongs, and also a record of his proceedings, in duplicate, and each copy shall be signed by him and each of the witnesses.

(*5*) On the conclusion of the proceedings under sub-section (*3*) or sub-section (*4*), the Custodian shall forward one copy of the record and inventory where the property is situated in Greater Bombay to the Bombay City Civil Court and where the property is situated elsewhere to the District Court concerned for record.

Inquiry into claims to evacuee property.

7. (*1*) Any person claiming any right to or interest in any property, of which the Custodian has taken possession under section 6, may prefer such claim to the Custodian by an application within thirty days from the date on which the possession of the property was taken.

(*2*) The Custodian may, after summary inquiry, reject the application, if it appears to him that the claim is untenable.

(*3*) If upon such inquiry it appears to the Custodian that the applicant has a right to, or interest in, the property, he may make such order as he considers proper in order to give effect to such right or interest consistently with the objects of this Act:

Provided that if the Custodian is satisfied that the property is not evacuee property and that the applicant is entitled to the exclusive possession of the property, he may deliver possession of the property to the applicant.

(*4*) The Custodian shall record an order made under sub-section (*2*) or (*3*) setting out his findings and the reasons therefor.

(*5*) Any person aggrieved by an order made under sub-section (*2*) or (*3*) may, in Greater Bombay, appeal to the Bombay City Civil Court and elsewhere to the District Court concerned within one month of the making of the order.

(*6*) The High Court may of its own motion or on an application made to it call for the record of any proceedings relating to an evacuee property whether pending or disposed of under sub-section (*2*) or (*3*) for the purpose of satisfying itself as to the legality or propriety of an order passed in the aforesaid proceedings, and may pass such order in relation thereto as it may think fit.

(*7*) Subject to the decision of the Court in appeal or the High Court in revision the order of the Custodian shall be final and conclusive.

Prohibition of certain transactions affecting evacuee property.

8. (*1*) No sale, mortgage, pledge, lease, exchange or other transfer of any property or of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person, on or after the date on which this Act comes into force, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(*2*) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him.

(*3*) The Custodian shall reject any application made after the expiration of two months from the date of the transaction.

(*4*) The Custodian shall hold a summary inquiry into an application which is not rejected under sub-section (*3*), and may decline to confirm the transaction if it appears to the Custodian that—

(*a*) the transaction was not a *bona fide* one for valuable consideration; or

(*b*) the transaction was made with the object of the disposal of the property by the person who, on account of civil disturbances or the fear of such disturbances or partition of the country intends to leave, or has since the 15th day of August 1947 left, the territories comprised in the Province for a place outside India ; or

(*c*) the transaction is in the opinion of the Custodian prejudicial to the prescribed objects ; or

(*d*) for any other reason, to be recorded by the Custodian in writing, the transaction ought not to be confirmed.

(*5*) If the Custodian confirms the transaction he may confirm it unconditionally or subject to such conditions and terms as he may consider proper.

(*6*) The Custodian, if the order is pronounced in the absence of the applicant, shall forthwith give notice in writing to the applicant of any order passed by him under sub-section (*3*), (*4*) or (*5*).

Appeals.

9. (*1*) If the original order under section 8 is passed by an Assistant or Deputy Custodian of Evacuee Property, any person aggrieved by such order may appeal, within sixty days from the date of the communication of such order, to the Custodian of Evacuee Property and subject only to the decision on such appeal, if any, the order passed by the Assistant or Depurty Custodian of Evacuee Property, or any original or appellate order passed by the Custodian shall be final and conclusive.

(*2*) An appeal under this section may be admitted after the period of limitation prescribed therefor, if the appellant satisfies the Custodian to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Exemption from attachment.

10. All property of which the Custodian has taken possession under section 6 shall be exempt from attachment, distress or sale in execution of a decree of a court or an order of any other authority.

Powers of Custodian in regard to management.

11. (*1*) The Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving the property of or over which he has taken possession or control and for the proper management thereof.

(*2*) Without prejudice to the generality of the foregoing provision, the Custodian may, for the said purposes,—

(*i*) carry on the business of the evacuee ;

(*ii*) take action for the recovery of any money due to the evacuee ;

(*iii*) make any contracts or execute any documents in the name and on behalf of the evacuee ;

(*iv*) institute, defend or continue any legal proceedings in a civil or revenue court on behalf of the evacuee, refer any dispute to arbitration and compromise any claims, debts or liabilities ;

(*v*) raise on the security of the property such loans as may be necessary ;

(*vi*) incur any expenditure, including the payment of any taxes, duties, cesses and rates to Government or to any local authority, and any wages and salaries, pensions or provident fund contributions to or in respect of any empolyee of the evacuee and the payment of any debt due by the evacuee to any person ;

(*vii*) transfer by way of sale or mortagage or lease or otherwise dispose of any of the property of the evacuee :

Provided that the Custodian shall not sell any immovable property or any shop or business establishment or any undertaking except on the orders of the Provincial Government ;

(*viii*) invest any money held by him in any of the securities approved by the Provincial Government;

(*ix*) make payments for the maintenance of the evacuee or his family;

(*x*) where any building vesting in him is through imminent danger of collapse or for any other reason a source of danger to persons residing or carrying on business in the vicinity, to have it demolished, and in such case to sell the materials;

(*xi*) appoint a manager for the property of the evacuee and authorise him to exercise any of the powers of the Custodian under this section, and subject to the orders of the Provincial Government, fix the remuneration payable to such manager; and

(*xii*) delegate by general or special order to such officers as he considers necessary any of his functions under this Act.

Maintenance of accounts.

12. (*1*) The Custodian shall maintain a separate account of the property of each evacuee of which he has taken possession under section 6 and shall cause to be made therein entries of all receipts and payments.

(*2*) The accounts shall be maintained in such form and manner as the Provincial Government may prescribe.

(*3*) The manager of any property shall maintain the accounts and records relating to the property in his charge, and shall submit such accounts to the Custodian at least once a month.

(*4*) The Provincial Government shall cause such accounts to be inspected and audited at such intervals and by such persons as it shall determine.

Fees.

13. (*1*) The Provincial Government may prescribe the fees payable to the Custodian for the management of the property of which he takes possession under section 6.

(*2*) Such fees shall be payable out of the income of the property and shall be a first charge on the property.

(*3*) The fees paid under sub-section (*1*) shall be credited to the Provincial Government.

Return of property.

14. (*1*) On being satisfied that evacuees have returned or are returning to the Province, the Provincial Government may, by notification in the *Official Gazette*, authorise return of their immovable property to the owners in accordance with this section and subject to such conditions and terms as may be specified in the notification.

(*2*) Any person claiming to be entitled to any such property may apply in writing to the Custodian, who shall, after giving public notice, hold a summary inquiry into the claim, and make a formal order declaring the person to whom the possession of the property may be delivered.

(*3*) The delivery of the property to the person named in such order shall absolve the Custodian of all responsibility and liability in respect of the property, but shall not prejudice any rights in respect of the property, which any other person may be entitled to by due process of law to enforce against the person to whom possession of the property is so delivered:

Provided that every lease validly granted by the Custodian shall have effect as against the owner until determined by lapse of time or operation of law.

(*4*) The Custodian shall deliver or cause to be delivered to the person named in the order referred to in sub-section (*2*) a statement containing an abstract of the account of the management of the property and, if any sum be due and outstanding to the Custodian in respect of the excess expenses or fees, a notice requiring that person to pay such sum with interest at the rate of six per centum per annum from the date of the notice ; and if the sum be not paid within the time specified in the notice it will be recoverable as provided in section 25.

(*5*) The Custodian may direct return of the moveable property in his possession to the owner at any time on such conditions and terms as he deems fit.

Powers of Custodian holding inquiry.

15. The Custodian while holding an inquiry under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :— V of 1908.

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) compelling the production of documents and material objects ;

(*c*) administering oaths ;

(*d*) in respect of such other matters as may be prescribed, and shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. V of 1898.

Power of Custodian to obtain information.

16. (*1*) The Custodian may by an order in writing require any person to furnish any information or produce any books, accounts or other documents possessed by such person relating to any property referred to in section 4 or otherwise necessary for carrying into effect the objects of this Act.

(*2*) Whoever fails to comply with a direction under sub-section (*1*) or submits information which is false or which he either knows or has reasonable cause to believe to be false or does not believe to be ture, shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be liable to fine.

Other powers of Custodian.

17. (*1*) The Custodian may, if it appears to him to be necessary to do so to secure compliance with this Act or otherwise carry into effect the objects of this Act,—

(*a*) inspect or cause to be inspected any books, accounts or other documents ; and

(*b*) enter and search or authorise any person to enter and search any premises.

(*2*) Whoever obstructs the Custodian or any person acting under his direction in the exercise of the powers conferred under sub-section (*1*) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

Penalty for failing to surrender possession of, or to vacate, property.

18. (*1*) Any person who fails to comply with an order to surrender possession of or to vacate any property made by the Custodian or any person authorised by him in this behalf shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(*2*) An offence under sub-section (*1*) shall be cognizable.

Certain officers to be public servants.

19. The Custodian and every person duly appointed by any authority to discharge any functions under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

XLV of 1860.

Orders not to be called in question.

20. Except as provided in this Act, no order made in exercise of any power conferred by this Act shall be called in question in any Court.

Procedure.

21. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Provincial Government or any officer authorised by it in this behalf by general or special order.

Saving.

22. Anything done or purported to have been done under this Act shall not be invalidated or affected by reason only that at a material time,—

(*a*) some person who or might have been interested in or over property and who was an evacuee had died or had ceased to be an evacuee, or

(*b*) some person who was so interested and who was believed by the Custodian to be an evacuee was not an evacuee.

Effect of Acts, etc., inconsistent with other enactments.

23. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any such enactment.

Bar to legal proceedings.

24. No suit or prosecution or other legal proceedings shall lie against the Provincial Government or the Custodian or any person acting under the direction of the Provincial Government or the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Recovery of arrears.

25. Any arrear due from or sum payable by any person to the Custodian may on application to the Collector be realized as an arrear of land revenue.

Records under Act to be public documents.

26. All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and shall be presumed to be true until the contrary is proved.

I of 1872.

Notice to Custodian.

27. (*1*) In any suit in which it appears to the Civil or Revenue Court that a question relating to the property of an evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(*2*) The Court may at any stage of the proceedings order that the Custodian shall be added as a defendant in any civil or revenue suit involving a question relating to the property of an evacuee, if the Custodian, whether upon receipt of notice under sub-section (*1*) or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question involved.

(*3*) In the application of this section to appeals the word "defendant" shall be construed to include a respondent and the word "suit" an appeal.

Power to make rules.

28. (*1*) The Provincial Government may, by notification in the *Official Gazette*, make such rules as appear to it to be necessary or expedient to carry into effect the provisions of this Act.

(*2*) Without prejudice to the generality of the powers conferred by sub-section (*1*), the rules may provide for, or may empower any authority to make orders providing for all or any of the following matters, namely :—

(*a*) the forms of the applications and the manner of their presentation ;

(*b*) the forms of the notices to be issued, the orders to be made and the manner of their service and publication ;

(*c*) the manner in which appeals may be presented ;

(*d*) the procedure for holding summary inquiries and for the disposal of appeals ;

(*e*) the procedure governing the grant of leases or the sale of property by the Custodian and the periods for which leases may be granted ;

(*f*) the forms of and the manner in which accounts and records shall be maintained ;

(*g*) the classes of officers to be appointed by the Custodian, their remuneration, designations, powers and functions and the extent of their jurisdication ;

(*h*) the intervals at which, the manner in which and the authority by whom, the accounts and records maintained under this Act, shall be inspected and audited ;

(*i*) fees payable to the Custodian for management of the property ;

(*j*) any other matter which is to be or may be prescribed.

(*3*) All rules made under this section shall be subject to the condition of previous publication.